

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Wells Fargo Special Risks, Inc.

v.

Civil No. 12-cv-223-JL

John G. Gray, G & A Insurance, Inc.,  
and Jeffrey D. Gray

**SUMMARY ORDER**

A preliminary pretrial conference in this matter is currently scheduled for Thursday, October 18, 2012. Per this court's customary practice, the conference typically includes a substantive, meaningful discussion of the parties' claims and defenses, and counsel are expected to be prepared to explain the factual basis underlying those claims or defenses.

Here, however, no such discussion will be possible if the conference proceeds as presently scheduled, because defendants have not yet answered the complaint. This is not defendants' fault. So the conference could proceed in accordance with this court's usual practice, after denying defendants' partial motion to dismiss, this court ordered defendants to file their answer by October 12, 2012. See Order of Oct. 3, 2012. On Tuesday, October 9, 2012, however--before defendants had answered--the plaintiff filed an amended complaint. Pursuant to Rules 6(d) and 15(a)(3) of the Federal Rules of Civil Procedure, defendants need not answer the amended complaint until October 26, 2012, over one week after the conference.

The plaintiff's filing of an amended complaint was not proper. Rule 15(a)(1) provides that a plaintiff may amend the complaint once as a matter of course within either (A) 21 days of serving it, or (B) 21 days after the filing of an answer or a Rule 12 motion, whichever is earlier. The complaint was served on July 9, 2012, and defendants filed their Rule 12 motion on August 1, 2012, so to amend as a matter of course, the plaintiff needed to file an amended complaint no later than August 27, 2012. It did not do so, and as a result, the only way it could properly amend the complaint was to obtain defendants' written consent or leave of the court pursuant to Rule 15(a)(2). The plaintiff did not obtain leave of this court to amend, nor does it appear that defendants consented to the amendment in writing.

The amended complaint (document no. 13) is accordingly STRICKEN. By **October 24, 2012**, the plaintiff shall file either a stipulation wherein the defendants consent to the proposed amendment, or a motion for leave to amend the complaint that identifies why "justice . . . requires" the proposed amendment. See Fed. R. Civ. P. 15(a)(2). If the plaintiff does not make this filing, the defendants shall file an answer to the original complaint on or before **October 31, 2012**. **The preliminary pretrial conference scheduled for October 18, 2012 is CANCELLED**, and will be rescheduled after defendants file their answer (to

either the original or, as the case may be, the amended complaint).

**SO ORDERED.**

A handwritten signature in black ink, reading "Joe Laplante", written over a horizontal line.

Joseph N. Laplante  
United States District Judge

Dated: October 17, 2012

cc: John M. McKelway, Jr., Esq.  
David Himelfarb, Esq.  
Robert D. Laurie, Esq.